

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1882 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SWAMI DEVANANDJI ALIAS DEVJIBHAI JETHALAL THAKKAR

Versus

DEVJIBHAI TULSIDAS PATEL

Appearance:

MR YATIN SONI for Petitioners

MR JD BHATT for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/12/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Under the impugned order dated 31st July 1995 of the
3rd Joint District Judge, Ahmedabad (Rural) at Mirzapur,
passed below ex.126 in Regular Civil Suit No.1/86, the

objection raised by defendants-petitioners against the prayer of the petitioner for withdrawal of the suit was rejected. Vide ex.126 a purshis was passed by plaintiffs-respondents and therein they prayed for withdrawal of the suit unconditionally. That has been opposed. The learned trial court permitted the plaintiffs to withdraw their suit unconditionally and costs have been awarded in favour of defendants.

#. The learned counsel for the petitioners submitted that this suit has been filed after permission of the Charity Commissioner of the Government of Gujarat and it could have been withdrawn by the plaintiffs only after taking prior permission of the said authority. It has next been contended that this suit is in the nature of representative suit and the plaintiffs cannot be permitted to withdraw the same. Lastly it is contended that there were very very serious allegations against the defendants made by plaintiffs in the suit which were totally false and to avoid any adverse decision thereon this suit has been withdrawn.

#. Mr.J.D.Bhatt, learned counsel for respondents strongly opposed this revision application. It is contended that the plaintiffs have absolute right of withdrawal of the suit and reference in this respect has been made to Order 23 of the Civil Procedure Code. The defendant can have two objections against the prayer made by the plaintiff for withdrawal of the suit, i.e. no liberty may be granted to him for filing fresh suit and secondly the cost has to be awarded. In this case, Mr. Bhatt submits that the plaintiffs prayed for unconditional withdrawal of the suit and the cost has been awarded to the defendants and as such, they have no locus standi to file this revision application and what he precisely submits that they are not aggrieved parties in the matter. In reply to the other contentions made by learned counsel for the petitioners, he submits that there is no provision that the suit filed by the plaintiff with the prior permission of the Charity Commissioner cannot be withdrawn without permission of the officer. It is not a representative suit.

#. Having given my thoughtful considerations to the rival contentions of the learned counsel for the parties, I find that this revision application is wholly misconceived and ill-advised. Order 23 of the Civil Procedure Code is very clear and it gives an indefeasible right to the plaintiff to withdraw his suit unconditionally. That right cannot be objected by the defendant and rightly what it was not permitted to be

objected by the learned trial court in this case. It is understandable where the plaintiffs are seeking some liberty to file fresh suit there the defendant has right to object it. Where unconditional withdrawal is prayed for of the suit by the plaintiff, defendant may legitimately claim for costs and this claim has been accepted in this case by the learned trial court. I find sufficient merits in the contention of the learned counsel for the respondents that in fact, the petitioners are not aggrieved party in the matter.

#. The learned counsel for the petitioners failed to show any provisions from the Bombay Public Trust Act where it is provided that the suit which has been filed by the plaintiffs with the prior permission of the Charity Commissioner, withdrawal thereof is permissible only with prior permission of the said officer. In the absence of such provision therein, it is difficult to read what Mr.Soni contends that such provision is there. The learned counsel for the petitioners fairly submits that technically it is not a suit in representative capacity but a suit filed by plaintiffs with prior approval of the Charity Commissioner should be taken to be akin to a suit filed under representative capacity. I do not find any substance in this contention. Taking into consideration the totality of the facts of the case, no interference to the order impugned of the court below is called for under section 115 of the Civil Procedure code. The civil revision application fails and the same is dismissed with costs. Rule discharged.

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[sunil]